

**Introduced by Committee on Public Safety (Senators McPherson  
(Chair), Burton, Margett, Romero, Sher, and Vasconcellos)**

February 21, 2003

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An act to amend Section 803 of the Penal Code, and to amend Section 15763 of the Welfare and Institutions Code, relating to public safety.

LEGISLATIVE COUNSEL'S DIGEST

SB 851, as introduced, Committee on Public Safety. Public safety.

Under existing law, except as specified, a prescribed limitation of time for certain offenses is not tolled or extended for any reason. Existing law provides that for specified offenses a prescribed limitation of time does not commence to run until the discovery of that offense. This provision is applicable to those offenses punishable by imprisonment in the state prison, a material element of which is fraud or breach of a fiduciary obligation, the commission of the crimes of theft or embezzlement upon an elder or dependent adult, or the basis of which is misconduct in office by a public officer, employee, or appointee, including, but not limited to, specified offenses.

This bill would revise and recast these provisions regarding elder or dependent adults.

Existing law requires that each county establish an emergency response adult protective services program. Existing law requires a county to respond immediately to any report of imminent danger to an elder or dependent adult residing in other than a long-term care facility or a residential facility. For reports involving persons residing in a long-term care facility or a residential care facility, the county shall report to the local long-term care ombudsman program, as specified. Except as specified, existing law requires the county to respond to all other reports of danger to an elder or dependent adult in other than a

long-term care facility or residential care facility within 10 calendar days or as soon as practicably possible.

This bill would provide that a county shall not be required to report or respond to a report that involves danger to an elder or dependent adult residing in any facility for the incarceration of prisoners that is operated by or under contract to the Federal Bureau of Prisons, the Department of Corrections, the California Department of the Youth Authority, a county sheriff's department, a city police department, or any other law enforcement agency when the abuse reportedly has occurred in that facility.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 803 of the Penal Code is amended to  
2 read:

3 803. (a) Except as provided in this section, a limitation of  
4 time prescribed in this chapter is not tolled or extended for any  
5 reason.

6 (b) No time during which prosecution of the same person for  
7 the same conduct is pending in a court of this state is a part of a  
8 limitation of time prescribed in this chapter.

9 (c) A limitation of time prescribed in this chapter does not  
10 commence to run until the discovery of an offense described in this  
11 subdivision. This subdivision applies to an offense punishable by  
12 imprisonment in the state prison, a material element of which is  
13 fraud or breach of a fiduciary obligation, ~~the commission of the~~  
14 ~~crimes of theft or embezzlement upon an elder or dependent adult,~~  
15 or the basis of which is misconduct in office by a public officer,  
16 employee, or appointee, *or to a theft or embezzlement from an*  
17 *elder or dependent adult punishable by imprisonment in the state*  
18 *prison*, including, but not limited to, the following offenses:

19 (1) Grand theft of any type, forgery, falsification of public  
20 records, or acceptance of a bribe by a public official or a public  
21 employee.

22 (2) A violation of Section 72, 118, 118a, 132, or 134.

23 (3) A violation of Section 25540, of any type, or Section 25541  
24 of the Corporations Code.



1 (4) A violation of Section 1090 or 27443 of the Government  
2 Code.

3 (5) Felony welfare fraud or Medi-Cal fraud in violation of  
4 Section 11483 or 14107 of the Welfare and Institutions Code.

5 (6) Felony insurance fraud in violation of Section 548 or 550  
6 of this code or former Section 1871.1, or Section 1871.4, of the  
7 Insurance Code.

8 (7) A violation of Section 580, 581, 582, 583, or 584 of the  
9 Business and Professions Code.

10 (8) A violation of Section 22430 of the Business and  
11 Professions Code.

12 (9) A violation of Section 10690 of the Health and Safety Code.

13 (10) A violation of Section 529a.

14 (11) A violation of subdivision (d) or (e) of Section 368.

15 (d) If the defendant is out of the state when or after the offense  
16 is committed, the prosecution may be commenced as provided in  
17 Section 804 within the limitations of time prescribed by this  
18 chapter, and no time up to a maximum of three years during which  
19 the defendant is not within the state shall be a part of those  
20 limitations.

21 (e) A limitation of time prescribed in this chapter does not  
22 commence to run until the offense has been discovered, or could  
23 have reasonably been discovered, with regard to offenses under  
24 Division 7 (commencing with Section 13000) of the Water Code,  
25 under Chapter 6.5 (commencing with Section 25100) of, Chapter  
26 6.7 (commencing with Section 25280) of, or Chapter 6.8  
27 (commencing with Section 25300) of, Division 20 of, or Part 4  
28 (commencing with Section 41500) of Division 26 of, the Health  
29 and Safety Code, or under Section 386, or offenses under Chapter  
30 5 (commencing with Section 2000) of Division 2 of, Chapter 9  
31 (commencing with Section 4000) of Division 2 of, Chapter 10  
32 (commencing with Section 7301) of Division 3 of, or Chapter 19.5  
33 (commencing with Section 22440) of Division 8 of, the Business  
34 and Professions Code.

35 (f) (1) Notwithstanding any other limitation of time described  
36 in this chapter, a criminal complaint may be filed within one year  
37 of the date of a report to a responsible adult or agency by a child  
38 under 18 years of age that the child is a victim of a crime described  
39 in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.

(2) For purposes of this subdivision, a “responsible adult” or “agency” means a person or agency required to report pursuant to Section 11166. This subdivision applies only if both of the following occur:

(A) The limitation period specified in Section 800 or 801 has expired.

(B) The defendant has committed at least one violation of Section 261, 286, 288, 288a, 288.5, 289, or 289.5 against the same victim within the limitation period specified for that crime in either Section 800 or 801.

(3) (A) This subdivision applies to a cause of action arising before, on, or after January 1, 1990, the effective date of this subdivision, and it shall revive any cause of action barred by Section 800 or 801 if any of the following occurred or occurs:

(i) The complaint or indictment was filed on or before January 1, 1997, and it was filed within the time period specified in this subdivision.

(ii) The complaint or indictment is or was filed subsequent to January 1, 1997, and it is or was filed within the time period specified within this subdivision.

(iii) The victim made the report required by this subdivision to a responsible adult or agency after January 1, 1990, and a complaint or indictment was not filed within the time period specified in this subdivision, but a complaint or indictment is filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.

(iv) The victim made the report required by this subdivision to a responsible adult or agency after January 1, 1990, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, but a new complaint or indictment is or was filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive

1 application of this subdivision is constitutional, whichever occurs  
2 first.

3 (B) (i) If the victim made the report required by this  
4 subdivision to a responsible adult or agency after January 1, 1990,  
5 and a complaint or indictment was filed within the time period  
6 specified in this subdivision, but the indictment, complaint, or  
7 subsequently filed information was dismissed, a new complaint or  
8 indictment may be filed notwithstanding any other provision of  
9 law, including, but not limited to, subdivision (c) of Section 871.5  
10 and subdivision (b) of Section 1238.

11 (ii) An order dismissing an action filed under this subdivision,  
12 which is entered or becomes effective at any time prior to 180 days  
13 after the date on which either a published opinion of the California  
14 Supreme Court, deciding the question of whether retroactive  
15 application of this section is constitutional, becomes final or the  
16 United States Supreme Court files an opinion deciding the  
17 question of whether retroactive application of this subdivision is  
18 constitutional, whichever occurs first, shall not be considered an  
19 order terminating an action within the meaning of Section 1387.

20 (iii) Any ruling regarding the retroactivity of this subdivision  
21 or its constitutionality made in the course of the previous  
22 proceeding, including any review proceeding, shall not be binding  
23 upon refiling.

24 (g) (1) Notwithstanding any other limitation of time described  
25 in this chapter, a criminal complaint may be filed within one year  
26 of the date of a report to a California law enforcement agency by  
27 a person of any age alleging that he or she, while under the age of  
28 18 years, was the victim of a crime described in Section 261, 286,  
29 288, 288a, 288.5, 289, or 289.5.

30 (2) This subdivision applies only if both of the following occur:

31 (A) The limitation period specified in Section 800 or 801 has  
32 expired.

33 (B) The crime involved substantial sexual conduct, as  
34 described in subdivision (b) of Section 1203.066, excluding  
35 masturbation that is not mutual, and there is independent evidence  
36 that clearly and convincingly corroborates the victim's allegation.  
37 No evidence may be used to corroborate the victim's allegation  
38 that otherwise would be inadmissible during trial. Independent  
39 evidence does not include the opinions of mental health  
40 professionals.

(3) (A) This subdivision applies to a cause of action arising before, on, or after January 1, 1994, the effective date of this subdivision, and it shall revive any cause of action barred by Section 800 or 801 if any of the following occurred or occurs:

(i) The complaint or indictment was filed on or before January 1, 1997, and it was filed within the time period specified in this subdivision.

(ii) The complaint or indictment is or was filed subsequent to January 1, 1997, and it is or was filed within the time period specified within this subdivision.

(iii) The victim made the report required by this subdivision to a law enforcement agency after January 1, 1994, and a complaint or indictment was not filed within the time period specified in this subdivision, but a complaint or indictment is filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this subdivision is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.

(iv) The victim made the report required by this subdivision to a law enforcement agency after January 1, 1994, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, but a new complaint or indictment is filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this subdivision is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.

(B) (i) If the victim made the report required by this subdivision to a law enforcement agency after January 1, 1994, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, a new complaint or indictment may be filed notwithstanding any other provision of law, including, but not limited to, subdivision (c) of Section 871.5 and subdivision (b) of Section 1238.

(ii) An order dismissing an action filed under this subdivision, which is entered or becomes effective at any time prior to 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first, shall not be considered an order terminating an action within the meaning of Section 1387.

(iii) Any ruling regarding the retroactivity of this subdivision or its constitutionality made in the course of the previous proceeding, by any trial court or any intermediate appellate court, shall not be binding upon refiling.

(h) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person under 21 years of age, alleging that he or she, while under 18 years of age, was the victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.

(2) This subdivision applies only if both of the following occur:

(A) The limitation period specified in Section 800 or 801 has expired.

(B) The crime involved substantial sexual conduct, as described in subdivision (b) of Section 1203.066, excluding masturbation that is not mutual, and there is independent evidence that corroborates the victim's allegation. No evidence may be used to corroborate the victim's allegation that otherwise would be inadmissible during trial. Independent evidence does not include the opinions of mental health professionals.

(3) This subdivision applies to a cause of action arising before, on, or after January 1, 2002, the effective date of this subdivision, and it shall revive any cause of action barred by Section 800 or 801 if the complaint or indictment was filed within the time period specified by this subdivision.

(i) (1) Notwithstanding the limitation of time described in Section 800, the limitations period for commencing prosecution for a felony offense described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290, where the limitations period set forth in Section 800 has not expired as of January 1, 2001, or the offense is committed on or after January 1, 2001, shall be 10



1 years from the commission of the offense, or one year from the  
2 date on which the identity of the suspect is conclusively  
3 established by DNA testing, whichever is later, provided,  
4 however, that the one-year period from the establishment of the  
5 identity of the suspect shall only apply when either of the  
6 following conditions is met:

7 (A) For an offense committed prior to January 1, 2001,  
8 biological evidence collected in connection with the offense is  
9 analyzed for DNA type no later than January 1, 2004.

10 (B) For an offense committed on or after January 1, 2001,  
11 biological evidence collected in connection with the offense is  
12 analyzed for DNA type no later than two years from the date of the  
13 offense.

14 (2) In the event the conditions set forth in subparagraph (A) or  
15 (B) of paragraph (1) are not met, the limitations period for  
16 commencing prosecution for a felony offense described in  
17 subparagraph (A) of paragraph (2) of subdivision (a) of Section  
18 290, where the limitations period set forth in Section 800 has not  
19 expired as of January 1, 2001, or the offense is committed on or  
20 after January 1, 2001, shall be 10 years from the commission of the  
21 offense.

22 (3) For purposes of this section, “DNA” means  
23 deoxyribonucleic acid.

24 (j) For any crime, the proof of which depends substantially  
25 upon evidence that was seized under a warrant, but which is  
26 unavailable to the prosecuting authority under the procedures  
27 described in *People v. Superior Court (Laff)* (2001) 25 Cal.4th  
28 703, *People v. Superior Court (Bauman & Rose)* (1995) 37  
29 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to  
30 claims of evidentiary privilege or attorney work product, the  
31 limitation of time prescribed in this chapter shall be tolled from the  
32 time of the seizure until final disclosure of the evidence to the  
33 prosecuting authority. Nothing in this section otherwise affects the  
34 definition or applicability of any evidentiary privilege or attorney  
35 work product.

36 (k) As used in subdivisions (f), (g), and (h), Section 289.5  
37 refers to the statute enacted by Chapter 293 of the Statutes of 1991  
38 relating to penetration by an unknown object.

39 SEC. 2. Section 15763 of the Welfare and Institutions Code  
40 is amended to read:





1 15763. (a) Each county shall establish an emergency  
2 response adult protective services program that shall provide  
3 in-person response, 24 hours per day, seven days per week, to  
4 reports of abuse of an elder or a dependent adult, for the purpose  
5 of providing immediate intake or intervention, or both, to new  
6 reports involving immediate life threats and to crises in existing  
7 cases. The program shall include policies and procedures to  
8 accomplish all of the following:

9 (1) Provision of case management services that include  
10 investigation of the protection issues, assessment of the person's  
11 concerns, needs, strengths, problems, and limitations, stabilization  
12 and linking with community services, and development of a  
13 service plan to alleviate identified problems utilizing counseling,  
14 monitoring, followup, and reassessment.

15 (2) Provisions for emergency shelter or in-home protection to  
16 guarantee a safe place for the elder or dependent adult to stay until  
17 the dangers at home can be resolved.

18 (3) Establishment of multidisciplinary teams to develop  
19 interagency treatment strategies, to ensure maximum coordination  
20 with existing community resources, to ensure maximum access on  
21 behalf of elders and dependent adults, and to avoid duplication of  
22 efforts.

23 (b) (1) A county shall respond immediately to any report of  
24 imminent danger to an elder or dependent adult residing in other  
25 than a long-term care facility, as defined in Section 9701 of the  
26 Welfare and Institutions Code, or a residential facility, as defined  
27 in Section 1502 of the Health and Safety Code. For reports  
28 involving persons residing in a long-term care facility or a  
29 residential care facility, the county shall report to the local  
30 long-term care ombudsman program. Adult protective services  
31 staff shall consult, coordinate, and support efforts of the  
32 ombudsman program to protect vulnerable residents. Except as  
33 specified in paragraph (2), the county shall respond to all other  
34 reports of danger to an elder or dependent adult in other than a  
35 long-term care facility or residential care facility within 10  
36 calendar days or as soon as practicably possible.

37 (2) An immediate or 10-day in-person response is not required  
38 when the county, based upon an evaluation of risk, determines and  
39 documents that the elder or dependent adult is not in imminent  
40 danger and that an immediate or 10-day in-person response is not

1 necessary to protect the health or safety of the elder or dependent  
2 adult.

3 (3) The State Department of Social Services, in consultation  
4 with the County Welfare Directors Association, shall develop  
5 requirements for implementation of paragraph (2), including, but  
6 not limited to, guidelines for determining appropriate application  
7 of this section and any applicable documentation requirements.

8 (4) Notwithstanding Chapter 3.5 (commencing with Section  
9 11340) of Part 1 of Division 3 of Title 2 of the Government Code,  
10 the department shall implement the requirements developed  
11 pursuant to paragraph (3) by means of all-county letters or similar  
12 instructions prior to adopting regulations for that purpose.  
13 Thereafter, the department shall adopt regulations in accordance  
14 with the requirements of Chapter 3.5 (commencing with Section  
15 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

16 (c) *A county shall not be required to report or respond to a*  
17 *report pursuant to subdivision (b) that involves danger to an elder*  
18 *or dependent adult residing in any facility for the incarceration of*  
19 *prisoners that is operated by or under contract to the Federal*  
20 *Bureau of Prisons, the Department of Corrections, the California*  
21 *Department of the Youth Authority, a county sheriff's department,*  
22 *a city police department, or any other law enforcement agency*  
23 *when the abuse reportedly has occurred in that facility.*

24 (d) A county shall provide case management services to elders  
25 and dependent adults who are determined to be in need of adult  
26 protective services for the purpose of bringing about changes in the  
27 lives of victims and to provide a safety net to enable victims to  
28 protect themselves in the future. Case management services shall  
29 include the following, to the extent services are appropriate for the  
30 individual:

31 (1) Investigation of the protection issues, including, but not  
32 limited to, social, medical, environmental, physical, emotional,  
33 and developmental.

34 (2) Assessment of the person's concerns and needs on whom  
35 the report has been made and the concerns and needs of other  
36 members of the family and household.

37 (3) Analysis of problems and strengths.

38 (4) Establishment of a service plan for each person on whom  
39 the report has been made to alleviate the identified problems.

40 (5) Client input and acceptance of proposed service plans.



1 (6) Counseling for clients and significant others to alleviate the  
2 identified problems and to implement the service plan.

3 (7) Stabilizing and linking with community services.

4 (8) Monitoring and followup.

5 (9) Reassessments, as appropriate.

6 (d) To the extent resources are available, each county shall  
7 provide emergency shelter in the form of a safe haven or in-home  
8 protection for victims. Shelter and care appropriate to the needs of  
9 the victim shall be provided for frail and disabled victims who are  
10 in need of assistance with activities of daily living.

11 (e) Each county shall designate an adult protective services  
12 agency to establish and maintain multidisciplinary teams  
13 including, but not limited to, adult protective services, law  
14 enforcement, home health care agencies, hospitals, adult  
15 protective services staff, the public guardian, private community  
16 service agencies, public health agencies, and mental health  
17 agencies for the purpose of providing interagency treatment  
18 strategies.

19 (f) Each county shall provide tangible support services, to the  
20 extent resources are available, which may include, but not be  
21 limited to, emergency food, clothing, repair or replacement of  
22 essential appliances, plumbing and electrical repair, blankets,  
23 linens, and other household goods, advocacy with utility  
24 companies, and emergency response units.

25 SEC. 3. Any section of any act enacted by the Legislature  
26 during the 2003 calendar year that takes effect on or before January  
27 1, 2004, and that amends, amends and renumbers, adds, repeals  
28 and adds, or repeals any one or more of the sections affected by this  
29 act shall prevail over this act, whether that act is enacted prior to,  
30 or subsequent to, the enactment of this act. The repeal, or repeal  
31 and addition, of any article, chapter, part, title, or division of any  
32 code by this act shall not become operative if any section of any  
33 other act that is enacted by the Legislature during the 2003  
34 calendar year and takes effect on or before January 1, 2004,  
35 amends, amends and renumbers, adds, repeals and adds, or repeals  
36 any section contained in that article, chapter, part, title, or division.